

IN THE MATTER of the Ontario Human Rights Code  
R.S.O. 1970, c.318 as amended.

AND IN THE MATTER of the Complaint made by Mrs.  
Minnie Jones on behalf of Mrs. Ethel Wilkinson  
of St. Catharines, Ontario alleging discrimination  
in housing because of race and colour by Mr. Chris  
Huber and Mrs. Waltraud Huber of St. Catharines,  
Ontario.

Appearances

Mr. T.H. Wickett and Miss L.E. Weinrib	- Counsel for the Ontario Human Rights Commission and the Complainant, Mrs. Minnie Jones
Mr. Chris Huber	- Respondent, in person
Mrs. Waltraud Huber	- Respondent, in person

REASONS FOR DECISION

Mrs. Ethel Wilkinson, a black woman, living in Toronto had asked her sister, Mrs. Minnie Jones, who is also black, to assist her in finding accommodation in St. Catharines for herself and her two children. She instructed Mrs. Jones to look for a two bedroom apartment near a school at a relatively low rent of \$200 or under. Mrs. Jones examined the advertisements in the St. Catharines Standard and on April 22, 1975 noticed one which offered a two bedroom apartment for rent at \$150 per month. She telephoned the number listed therein and spoke to the male Respondent, Mr. Chris Huber. She gave him her name and indicated that she was looking for accommodation for her sister and her two children. An appointment was arranged for four o'clock p.m. later that day. Mrs. Jones went to meet Mr. Huber and was accompanied by two of her other sisters who were aged seventeen and eighteen at that time. When they arrived at the apartment building at 11 York Street, Mrs. Jones parked the car at the rear of the building and then coincidentally met Mr. Huber outdoors as she and her sisters



emerged from the back of the building. Mrs. Jones asked if he in fact was Mr. Huber and identified herself and then asked to see the apartment. Mr. Huber's immediate response was negative. He said that he was sorry, that he had nothing personally against blacks but if he rented an apartment to her many of his tenants would leave the building. Mrs. Jones said thank you and departed and no further conversation took place between them. Mrs. Jones never had the opportunity to view the apartment.

Mrs. Jones informed her husband, James Jones, who is white, about this incident. The following day he along with a white male friend, Michael Perry, met with Mrs. Waltraud Huber, the wife of Mr. Chris Huber, at the apartment building to discuss the possibility of renting the apartment that was listed in the newspaper advertisement. The apartment had not been rented and Mr. Jones and Mr. Perry were permitted to view the apartment and indicated a willingness to rent it. Mr. Jones gave Mrs. Huber a \$25 cheque as a deposit. A receipt was later obtained for this payment and it was introduced as Exhibit 1 in these proceedings. The next morning Mr. Jones stopped payment on the cheque. The purpose of this incident obviously was to secure evidence against the Respondents in support of a claim under the Ontario Human Rights Code.

A Complaint was lodged under s.13(1) of the Code by Mrs. Jones on behalf of her sister Mrs. Ethel Wilkinson alleging that the Respondents, Mr. and Mrs. Huber, who were the joint owners of the apartment building in question, had contravened s.3(1)(a) of the Code.

A Human Rights officer, Caroline Bell, arranged to meet with Mr. and Mrs. Huber on May 23, 1975 to discuss the matter. She first met with Mrs. Huber alone and Mrs. Huber told her that three of the tenants



in the building would move out if she rented to blacks. Mrs. Huber also said that they had in fact rented the apartment to a Mr. Jones prior to the Complainant coming to the apartment and therefore it was not available. Mr. Huber then joined the meeting with Mrs. Bell and he said that some of the tenants had told him that they would move out of the building if he permitted blacks to become tenants. He referred to a friend in the city of Rochester, New York, who admitted one black into his building and was faced with many white tenants fleeing from the building.

Mrs. Bell investigated the matter further and spoke to all but one of the tenants in the fourteen unit building. She inquired of each of them whether they had ever discussed with Mr. and Mrs. Huber the question of black tenants moving into the building. All but one denied ever having such a conversation. One tenant did indicate that he might move out depending on whether the black was "nice". Another tenant said that if two or three blacks moved in, he would leave.

The Respondents pointed out that they had in the past rented an apartment to an Asiatic Indian couple, Mr. and Mrs. Phatak, and on another occasion had rented an apartment to a native Indian. Mr. Huber also said in the course of this conversation that although it is fine to have blacks as friends, they should live in a separate area.

Those are the simple facts and there is no dispute among the parties as to their substantial accuracy. The explanation given by Mr. and Mrs. Huber for this conduct was that Mr. Huber instantaneously formed a poor impression of Mrs. Jones for two reasons. First, he considered it rather unorthodox that Mrs. Jones would approach from behind the building as she did on the day in question, even though he conceded that the parking





lot was at the back of the building and it was natural to park one's vehicle there. Nevertheless, he thought it would have been more proper if she had come through the front of the building. Secondly, he thought that she was sloppily dressed. When pressed for specific details with respect to this he indicated that she was wearing blue jeans with fringes on the trouser legs. A further reason advanced, as mentioned earlier, was an economic one, i.e. that if he permitted blacks in the building as tenants, he would lose many of his long-standing tenants.

With respect to the Complainant's demeanour and appearance, the conclusion reached by the Hubers on the basis of what they have told this Board can only be a rationalization after the fact to substantiate the true reason for turning away the Complainant and that is the apprehension that they would jeopardize some of their other tenancies if they rented to blacks. When asked what he would have done had Mrs. Jones appeared before him in what he considered to be proper dress, Mr. Huber conceded that he didn't know whether he would have shown the apartment to her. That would suggest that the economic factor was uppermost in his mind. In any event, race is an impermissible factor in an apartment rental decision and cannot be brushed aside because it was not the sole reason for discrimination. So long as it was one of the considerations, it will constitute a violation of the Ontario Human Rights Code.

Fear of economic loss cannot justify discriminatory conduct on the part of the Respondents. Section 3(1)(a) of the Ontario Human Rights Code reads as follows:





3. (1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,

(a) deny to any person or class of persons occupancy of any commercial unit or any housing accommodation . . .

because of race, creed, colour, sex, nationality, ancestry or place of origin of such person or class of persons or of any other person or class of persons.

It matters not what the motivating reason for the racially discriminatory act is. Although motive may be an important factor with respect to the question of redress, it cannot justify the offensive behaviour. A person cannot avoid liability under the Code by arguing that he has discriminated against an individual, not because he himself objects to his race or colour, but because others do. The provisions of the Ontario Human Rights Code cannot be circumvented by discriminatory acts performed by proxy. If landlords were permitted to defer to the racial prejudices of their tenants, it would defeat the main objectives of the Code. Therefore, although Mr. Huber professes to bear no personal animosity or adverse feelings towards blacks and claims he was just responding to the wishes of his tenants, he has nevertheless been responsible for a contravention of the Code.

The Hubers believe that the Government has no right to interfere with their freedom to determine who should be tenants in their building. It is surprising to see this argument advanced some 15 years after the enactment of the Code. I can do no better than to quote from a Report of Professor Horace Krever (now Mr. Justice Krever of the Supreme Court of Ontario) in the Tompkins and Michon v. Kyryliuk Inquiry (July 9, 1971) at page 13, where in reference to the respondents in that particular proceeding he said as follows:



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"They are sincere in their conviction that they are good, law abiding citizens who are simply concerned with protecting their hard earned rights. They are equally convinced that they have been victimized by the proceedings . . . In these convictions they are, of course, quite wrong. They do not yet appreciate the fact that today and, at least in Ontario, human rights and the dignity of every person are not subsidiary or secondary to property rights."

Consequently this Board must come to the conclusion that Mr. Chris Huber has contravened s.3(1)(a) of the Ontario Human Rights Code.

Counsel for the Commission argued that Mrs. Waltraud Huber was equally responsible for the breach. He alleged that because Mr. and Mrs. Huber were co-owners of the apartment building and that because Mr. Huber was acting as her agent in securing tenants, she "indirectly" denied to Mrs. Wilkinson or the Complainant occupancy of rental accommodation. There is no evidence to suggest that Mrs. Waltraud Huber was involved in any positive way in denying accommodation to either Mrs. Wilkinson or Mrs. Jones. Although in her testimony she agreed with the conduct of her husband, the holding of opinions which have racial overtones does not amount to a contravention of the Code. The legislation does not forbid discriminatory thinking but only discriminatory conduct and unless the former is translated into the latter, there can be no violation of the Code. Notwithstanding that, it is clear that Mr. and Mrs. Huber are partners in their business enterprise and that Mr. Huber in the instant case had Mrs. Huber's authority to act on her behalf in renting the apartment unit in question. It is part of our law that the owner of the property is liable for the acts of her agent, done in the course of his authority, whether or not



they are done with the owner's express approval. Accordingly, as co-owner of the property, she must be held responsible for the conduct of the other co-owner and her agent, Mr. Chris Huber, for his discriminatory practice. Consequently, Mrs. Waltraud Huber is equally in contravention of s.3(1)(a) in that she "indirectly, . . . by the interposition of another . . ." denied housing accommodation to Mrs. Jones and thereby Mrs. Wilkinson, because of their race and colour.

Counsel for the Commission argued that this was an appropriate case in which damages should be paid to Mrs. Wilkinson to first, compensate her for the increased cost to her of the apartment that she subsequently rented and secondly, to compensate her for the embarrassment and insult that she suffered. Mrs. Wilkinson was successful in securing a two bedroom apartment in St. Catharines approximately one and one-half weeks after the incident between Mr. Huber and Mrs. Jones. On May 2, 1975 she entered into a rental agreement (Exhibit 3) by which she leased a two bedroom apartment at 359 Geneva Street for \$190 per month for the period June 1, 1975 to May 31, 1976. A pro-rated rent of \$177 was to be paid for the period from May 3, 1975 to May 31, 1975. It should be remembered that Mrs. Wilkinson had instructed Mrs. Jones to look for an apartment on her behalf which incurred a monthly rental of \$200 or less. Consequently, this apartment at 359 Geneva Street was suitable from that point of view. Mrs. Wilkinson had in fact been paying a monthly rental of \$190 for her accommodation in Toronto. There is no doubt that had Mrs. Wilkinson rented the apartment unit in question in Mr. and Mrs. Huber's building, she would have

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been spared a \$40 expense each month. The problem that the Board has is that there is no evidence to suggest that apartment #5 in Mr. and Mrs. Huber's building would have been satisfactory to Mrs. Wilkinson. She never viewed it nor did Mrs. Jones. Of course, they were never given the opportunity by Mr. Huber to inspect the premises. Notwithstanding that, both Mr. James Jones and Mr. Michael Perry who had inspected the premises, in their testimony indicated that the apartment unit was not large. Thus, there is a serious question as to whether these premises would have been suitable to Mrs. Wilkinson and her family. When one takes into account that she and her children are presently living in a three bedroom town-house which costs her \$335 per month, this Board cannot say with any degree of certainty that she would have agreed to rent the premises in question even if she had been permitted to do so by the landlords. Accordingly, there is no evidence upon which this Board can conclude that Mrs. Wilkinson has suffered any special damages as a result of the discriminatory act of the Respondents.

With respect to general damages, Mrs. Wilkinson was not the direct victim of the humiliation and insult and therefore, it cannot be said that she suffered any acute impairment of feelings as a result of the Respondents' conduct. There was, nevertheless, an element of humiliation and indignity that must have been felt by Mrs. Wilkinson upon learning of the incident and accordingly, under the power given to the Board by s.14c of the Ontario Human Rights Code, this Board orders that a nominal sum of \$50 be paid by the Respondents to Mrs. Ethel Wilkinson for any personal insult that she experienced because of the discriminatory act.

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In addition, to ensure that the Respondents fully comply with the provisions of the Ontario Human Rights Code, the Respondents are ordered to post the standard Human Rights card in the lobby of their apartment building. Secondly, they must give written notice of any vacancies in their building to the Human Rights Commission for a period of one year following the date of this decision. Such notice should be given prior to any public advertisement of the vacancies.

The relief granted by the Board is not designed to be punitive but merely seeks to rectify any injuries that have resulted because of the Respondents' conduct. It is hoped that the Respondents, upon reflection, will realize the importance of individual human dignity in a civilized society which must be paramount to any narrow personal belief about dealing with one's property as one wishes. To deny an individual his right to secure for himself and his family basic needs such as housing accommodation merely because of his skin colour is a most unfair and degrading type of discrimination and serves to undermine the concept of human equality which is fundamental to our present society. Nor would it be consistent with this concept to recognize the prejudices of others, such as the Respondents' tenants, as an acceptable reason for the Respondents giving differential treatment to members of a particular racial group.


The United States Supreme Court, in Brown v. Board of Education (1954) 347 U.S. 483, at p.494 alluded to one debilitating effect of discrimination against black children:

"To separate them from others solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."



As this is true for children, so is it true for all blacks who are forbidden access to ordinary housing markets and are forced into lives of segregation. The Respondents, I hope, might now realize that their action, although not prompted by any ill will on their part, nevertheless deprives individuals of their basic dignity.

DATED at Toronto this 29<sup>th</sup> day of June, 1976.

  
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S.N. Lederman  
Chairman  
Board of Inquiry





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Ontario.

O R D E R

This matter having been heard by this Board of Inquiry on  
June 9, 1976, pursuant to the Appointment by the Minister of Labour,  
The Honourable Bette Stephenson, dated the 1st day of April, 1976,  
in the presence of Counsel for the Ontario Human Rights Commission  
and Mrs. Minnie Jones, the Complainant, Mr. Chris Huber and Mrs.  
Waltraud Huber, the Respondents appearing in person, upon hearing  
read the Complaint and the evidence adduced and what was alleged by  
Counsel and the Respondents:

1. It is ordered that the Respondents post the  
standard Human Rights Card in the lobby of  
their apartment building at 11 York Street  
in the City of St. Catharines.
2. And it is ordered that the Respondents give  
written notice of any vacancy in the afore-  
said apartment building to the Human Rights  
Commission for a period of one year following  
the date of this Order. Such notice must be  
given prior to any public advertisement of the  
vacancy.



3. It is further ordered that the Respondents pay  
the sum of \$50.00 by way of compensation to  
Mrs. Ethel Wilkinson.

DATED this 29<sup>th</sup> day of June, 1976.

A handwritten signature in dark ink, appearing to read "S.N. Lederman", written over a horizontal line.

S.N. Lederman  
Chairman  
Board of Inquiry

